

Cannabis Compliance Board Regulatory Workshop Meeting Minutes

The Cannabis Compliance Board (CCB) held a public meeting on June 18, 2020, beginning at 9:00 a.m. In compliance with the Governor's Emergency Directive #006, dated March 22, 2020, the Workshop was conducted by means of electronic communication.

Cannabis Compliance Board Members Present:

Michael Douglas, Chair
Jerrie Merritt
Dennis Neilander

Tyler Klimas, Executive Director, called the meeting to order.

- I. Public Comment: Public comment was asked to be submitted online before 5:00pm June 17, 2020, to be read into the record at the meeting. Any comments received from that point on or after will be posted online in their entirety. Public comments may be submitted by email to: regulations@ccb.nv.gov.

Ten submissions were read into the record by Executive Director Klimas. Two submissions received were lengthy, technical submissions and were posted online following the meeting.

Submission one was from Jerry Velarde, president of Evergreen Organix. Velarde stated that terpene testing for edibles and topicals should be changed to be optional and recommends that labels should be simplified. He would like someone to discuss with producers the need for scoring and demarking servings of THC for edibles >10mg. He thinks that distributors should be exclusively responsible for inputting their routes, driver and vehicle information into Metrc., and should not be done by the producers and cultivators. Velarde states that the package weight entries on Metrc manifests are not necessary and not useful for deterring theft.

Submission two was from Dale Walsh of Walsh Certified Consultants. Walsh recommended the definition of "odor" be placed in Regulation 1 to clarify and assist in the enforcement of 8.015(3)(b).

Submission three was from Josh Kasoff, secretary of Nevada NORML. Kasoff asked if the newly formed Cannabis Compliance Board will be more transparent about their operations, open to speak with and inform the media, and respond to questions from the media on their operations.

Submission four was from Randall Query, Director of Government Relations for the American Association for Laboratory Accreditation. He strongly supports the regulation requiring ISO/IEC 17025 Accreditation through an International Laboratory Accreditation Cooperation (ILAC) signatory. Query requests clearer language in section 11.020 regarding the expected scope of work for assessments and inspections of laboratories.

Submission five was from Dwayne Carr. Carr stated that vapor products are not mentioned in the regulations. Carr asked if marijuana production facilities that extract concentrated cannabis for vape products have to abide by NRS 370 regulations? Carr asked if marijuana vape products are required to have a tobacco license also.

Submission six was from Mona Lisa Samuelson. Samuelson commented that the Cannabis Compliance Board is now the third regulatory agency tasked with oversight of the industry. Medical cannabis patients are fighting to protect consumer safety and preserve cannabis patients' rights. Samuelson submitted testimony on June 9, 2020 which addressed the verbiage that medical cannabis patients would like to see revised in the regulations. She stated that all penalties for violations should be more stringent. Samuelson alleges that the regulations will make it impossible for medical cannabis patients to be granted any legislative help from the Board without retaining a lawyer and paying exorbitant fees. Samuelson recommends a revision to Regulation 8.010 that cannabis cultivation facility must disclose in writing with each lot of usable cannabis provided to a cannabis sales facility all soil amendments, fertilizers, pesticides and other crop production aids applied, and the time timetable to which they were applied.

Submission seven was from Kiera Sears with Joey Gilbert Law. Sears stated that the Board will exceed its grant of authority and broaden its scope of power in direct violation of various statutory and constitutional provisions if the regulations are adopted as is. Sears stated that a substantial portion of the provisions contained in the proposed regulations are unlawful and included some of the specific regulations, but not all. Sears requested that the Board amend the proposed regulations and work with Legislative Counsel to ensure compliance with statutory grant of authority.

Submission eight was from Will Adler, Principal, Silver State Government Relations. Adler provided a summary of comments that were submitted on June 9, 2020, making recommendations to sections four, six, and eleven of the NCCR regulations. Section eleven under Cannabis Testing Laboratories included recommendations on publication of seed to sale tracking data, retesting, proficiency testing, and random laboratory assurance checks. Recommendation for section four was regarding maintaining past disciplinary actions. Section 6 included changes to security measures for laboratories.

Submission nine was from the Cannabis Equity and Inclusion Community (CEIC). CEIC would like to assist the Board in an advisory capacity as it relates to inclusion and community engagement with those communities harmed by the war on drugs. CEIC looks forward to the Cannabis Compliance Board adhering to AB 533 Section 64.

Submission ten was from Laura Jacobsen of McDonald Carano. Regarding NCCR 6.087(2)(b), (4), Jacobsen recommended to narrow or strike the provision such that not every person who enters into a contract with a cannabis establishment is required to register as an agent and obtain an agent card. A specified email address is requested for subsection 4. Regarding NCCR 6.085(1)(a), (6), (7), Jacobsen requested exempting cannabis testing facilities from some of the requirements of this proposed regulation as they are materially different from the other types of cannabis establishments. Jacobsen stated that NCCR 11.010(2) provides adequate qualifications for a scientific director of a cannabis testing facility. In NCCR 11.025(3), (5), she requested clarification that cost of third-party inspection shall not be borne by testing facility. NCCR 11.050(5) requested clarification that a testing facility may rely on the representation of the submitting facility that cannabis has been provided within two hours of harvest and undergone no further processing. Jacobsen supports NCCR 11.075.

II. Executive Director Klimas provided a brief overview of the NCCR draft, explained the process for developing the current draft, and detailed the process for adoption of the regulations.

Chairman Douglas appreciated the comments read into the record and stated that they will look into the different points that were raised.

Executive Director Klimas read through a brief description of each regulation and noted changes made.

- A. Regulation 1 names and designates NCCR as the regulations issued pursuant to the Regulation of Cannabis in accordance with the procedures prescribed by NRS 678A, 678B, 678C, and 678D. Regulation 1 also lists the words and terms defined in NRS 678A.020. Changes and clarifications as a result of public input were made to Section 1.125, 1.155, and 1.195. An addition of note made outside of public input was to 1.137, "Person" defined, broadens the definition to allow for the CCB to background check not only the individual but also the entity applying for the license where appropriate. An entity can be issued a work card as an independent contractor to help deal with management contracts.
- B. Regulation 2 outlines the organization and administration of the Cannabis Compliance Board, including powers and authority granted to the Chair of the CCB, mechanics of Board meetings, requirements of licensees and their representatives during a hearing or Board action, servicing of notices and subpoenas, and procedure for control of evidence. There were no changes to this regulation as a result of public input.
- C. Regulation 3 outlines the organization and administration of the Cannabis Advisory Commission. The Commission will include 8 members of the public and industry appointed by the Governor. Further information on appointments, structure and future meetings will be forthcoming once the CCB is fully authorized.
- D. Regulation 4 outlines grounds for disciplinary actions, lays out penalties for violations, describes imminent health hazards, explains the complaint and hearing process, creates a procedure for persons to request

declaratory orders and advisory opinions, and creates a process for persons to request a change to the regulations. A change to this regulation based on public input included an amendment to provide means to request an advisory opinion from the CCB which is included in 4.140. Revisions were made outside of public input to sections 4.035 through 4.060. Language was changed to update the amount of civil penalties assigned based on a detailed list of violations, a significant increase to fines across all civil penalty categories and the time between violations to compute progressive discipline was increased from two years to three years. Sections 4.070 through 4.135 were added to detail the disciplinary hearing process. This process clarifies the appointment, if deemed necessary by the Board, of a hearing officer to render a decision. The Board remains the final arbiter of discipline. Section 4.140 was created so applicants or licensees had the ability to obtain a declaratory order or advisory opinion from the Board. Section 4.145 was created so an interested party may petition the Board for a change in the regulations.

- E. Regulation 5 provides a more expansive and comprehensive licensing and approval structure for cannabis companies, owners, and employees and generally replaces and augments the provisions of NAC 453D.250 through NAC 453D.365. Regulation 5.0 is new and helps establish that a cannabis license is a privileged license, providing notification that such license is not guaranteed and placing the burden on the applicant to prove that they are suitable, not placing the burden on the CCB to prove that they are unsuitable. This regulation 5.0 is similar to the contents of Gaming Control Board's Regulation 4. Much of the licensing and inspection covered by Regulations 5.010 through 5.090 mimic the prior requirements of NAC 453D while giving CCB Agents more power to inspect locations and request information to conduct investigations while also broadening the qualifications for licensure to be evaluated by the CCB.

Regulation 5.095, which replaces NAC 453D.305, has been drastically revised so that license renewals will be reduced to primarily renewal fee payment instead of a significant submission and review of licensee information. The various items to be reviewed under NAC 453D.305 have either been eliminated or shifted so that they are reviewed during routine audits or Cannabis Establishment Agent Card renewals.

Regulations 5.110 and 5.115 clarify the types of transactions and organizations that the CCB regulates and extends regulation to entities or individuals that gain significant control over, or receive a percentage of profits from, licensees through agreements, financing or other means. These provisions were not originally included in NAC 453D.

Regulations 5.120 through 5.150 enhance the Cannabis Agent Registration Card process and clarify licensing of owners, officers and board members, while providing a mechanism for companies to request a waiver of the licensing process for owners of less than 5% that do not exert control over the licensee. The inability to waive licensing of less than 5% shareholders has been a significant impediment to the participation of publicly traded companies in the Nevada cannabis industry.

Regulation 5.135 codifies a process that the Agency recently put in place to eliminate paper application processing and manual payment acceptance.

Chairman Douglas commented that there will be ongoing discussions regarding the 5% issue and concerns as to the ability of the Board to waive certain requirements. There are some inconsistencies and it may be suitable for address at the next legislative session.

Member Neilander commented that Regulation 5 is consistent with part of the Board's charge to mimic the Gaming regulations to the extent that it made sense for this particular area. Neilander added that the declaratory order and advisory opinion provisions in Regulation 4 are better than what currently exists in Gaming regulations.

- F. Regulation 6 outlines cannabis possession limits for patients and adult use consumers, requirements if an establishment has changes in operations, written requests to change locations, standard operating procedures, inventory control systems, outdoor cultivation requirements, cleanliness and health of agents, and restrictions on advertising. Based on public comment, the regulations were amended to include weight in grams, where previously, the weight was listed in ounces. Other revisions both made internally and as a result of public input include in 6.010 (1)(d) and (2)(d) where language was added to include "A combination of usable and concentrated cannabis not to exceed the legal limit." In 6.065 (2)(f), language was added to include, if establishment is operational, a detailed inventory report and plan to transfer inventory to new location. In

6.070 (7), language was added to allow for patrol dogs and service animals to be onsite at cannabis facilities; and added “Nothing in this Section shall be construed to supersede, or be in conflict with, the Americans with Disability Act.”

In 6.080, language was added to help clarify independent laboratories are not included in the requirements to establish and implement an inventory control system as defined in 6.080 and independent testing laboratories do not need to supply consumer education and support. In 6.085 (3)(vi), language was added to include methods of providing stored video footage to the Board on portable, external hard drives or other media at the expense of the cannabis establishment and within a reasonable timeframe as determined by the Board. The word “video” was removed from “video printer” in 3(II). In 6.123, language removed requiring name, logo, sign and advertising needing preapproval from the Board.

The Board received numerous public comment requests to extend the due date for quarterly reports. The language was amended in 6.135 that now makes the requirement for quarterly reports due on the 30th day of January, April, July and October.

- G. Regulation 7 outlines the requirements for cannabis sales facilities’ operations, duties of agents before sale to consumer, proof of age, sales limits, restrictions on sales, advertising, storage, sources, and delivery requirements. Major revisions to this section include 7.030(8) which places a duty on a cannabis sales facility to not recommend products to women that are pregnant or breastfeeding. Public comment was received and accepted on Regulation 7.050(9). The timeframe to report a vehicle accident was increased from 2 hours to 12 hours. Executive Director Klimas added that public comment was received from the industry regarding regulations for curbside pickup. Although not included, it does remain in effect for the time being. Drive-throughs are also allowed through a submission of a facility modification. Requests for GPS tracking in delivery vehicles in place of preprinted delivery routes was also received.
- H. Regulation 8 outlines the requirements for cannabis cultivation facilities including operations, samples, excise taxes, access, and storage. There are no major revisions in this section.
- I. Regulation 9 outlines the requirements for production facilities including hand and arm contact with products, qualifications, extraction, training, use of ingredients, sanitation, temperature control, shelf life, testing, sinks, equipment and ventilation. Major revisions to this section include in 9.015(2), a certified food protection manager must be available on site during all operating hours. In 9.025(4), new menu items which require a HACCP plan must be approved by a processing authority prior to submission. Public comment was received regarding the shelf life of certain products. The science changes often, so it is recommended that guidance is issued through regular and updated announcements to industry.
- J. Regulation 10 outlines the requirements for minimum good manufacturing practices including quality control, ventilation and filtration, labeling and packaging, Standard Operating Procedures (SOPs), maintenance of equipment, hygiene, salvage of products, records, building requirements, water, plumbing, lighting, pesticides application, and waste. There are no major revisions to this section. Public comment was received requesting consistent use of centimeters and inches. Section 10.035 was revised to include both.
- K. Regulation 11 outlines the requirements for cannabis testing facilities including qualifications, accreditation, general laboratory standards and practices, chain of custody, records, proficiency testing, research and development, quality assurance, required tests, homogeneity, pesticides, sampling, certificates of analysis, and retesting. Major revisions to this section include 11.010(6), the scientific director must be on the premises of the testing facility at least 5 workdays each month. In 11.025(7), all quality assurance tests shall be validated or verified by the cannabis testing facility observing the guidelines of the most recent version of standard ASTM D8282: “Standard Practice for Laboratory Test Method Validation and Method Development” or any subsequent standard as approved by the appropriate Board Agent. In 11.040(8), proficiency tests must be completed with an acceptable range for all the target analytes that the cannabis testing facility reports to include quantitative results when applicable. The proficiency testing company will determine what the acceptable range is. In 11.050(4), the analytical portion that is used for the purposes of any microbial test must be a minimum of one gram, unless otherwise approved by the Board. In 11.050(8), the certificate of analysis shall include a photo of the product, as received. In 11.070(5), a cannabis testing facility shall keep any sample which fails testing, or which is collected by the Board for confirmation testing, for 30 days after failure or collection. In 11.075(1), a lot or production run of cannabis that fails a residual

solvents, pH, aw, homogeneity, or microbial screening test may be used to make an extract if approved by the board agent on a case by case basis.

Several comments were received regarding regulation 11.040(8). The verbiage was revised to state that a passing score will be determined by the proficiency testing company. The independent testing lab must receive a passing score on all target analytes. Any failed tests must be repeated within 30 days or as otherwise approved by the appropriate board agent. Per request, Regulation 11.050(3) was revised to include a lower limit of at least 5 grams of sample size for any production run. It was requested that alpha-terpinolene be revised to the common term “terpinolene”, which was accepted in regulation 11.055. A request to revise regulation 11.070(1)(d) was accepted to require the seed to sale tracking document, such as a Metrc tag, be attached to the sample package. As well as subsection 13 which allows the Board to publish all Certificates of Analysis on the CCB website. Regulation 11.075 was revised to spell out “water activity”, rather than just the abbreviation “aw”.

Questions were received regarding pathogenic E. coli tests and this is something that we will be looking into and communicating to the labs via Listserv. We received a request to add chromium and nickel to the heavy metals tests, this is something that we will look into for future revisions.

- L. Regulation 12 outlines the requirements for packaging and labeling of cannabis products including stamp or mold requirements, labeling, product disclosures and warnings. Numerous public comment requests were received to allow for an extended period of time for cannabis establishments to work through existing packaging before changing the wording for the warning requirements outlined in NCCR Section 12. The Board did not update the regulation language to give a timeframe but will be issuing industry guidance to allow for a 12-month work through period for existing packaging.

There were many small changes made to include in 12.015 (2): Language added to include cannabis or cannabis products must be packaged in opaque, child-resistant packaging in accordance with 16 C.F.R. Part 1700. In 12.030 (1)(j), changed language on the label requirements to state “This Product Contains Cannabis.” This section is for cannabis cultivation facilities and their products. In 12.030 (1)(K), added language for cannabis product labels to include the warning “Keep out of Reach of Children” on labels. This section is for cannabis cultivation facilities and their products. In 12.030 (2), sample label now includes an example of the proper warning on labels to include “This Product Contains Cannabis” and “Keep out of Reach of Children.” This section is for cannabis cultivation facilities and their products. In 12.035 (1)(o), changed warning language to be “This Product Contains Cannabis.” This section is for cannabis production facilities and their products. In 12.035 (2), sample label now includes an example of the proper warning on labels to include “This Product Contains Cannabis.” This section is for cannabis production facilities and their products. In 12.035 (1)(o), added language “If the product is an edible cannabis product other than extracts and tinctures, the serving size.” This is to help clarify that extracts and tinctures do not need to list a serving size on the label. In 12.040 (1)(k), changed language on the label requirements to state “This Product Contains Cannabis.” This section is for a cannabis sales facility and their products. In 12.040 (1)(k), added language for cannabis product labels to include the warning “Keep out of Reach of Children” on labels. This section is for a cannabis sales facility and usable cannabis products. In 12.040 (2), sample label now includes an example of the proper warning on labels to include “This Product Contains Cannabis” and “Keep out of Reach of Children.” This section is for a cannabis sales facility and usable cannabis products. In 12.045 (1)(s), changed language on the label requirements to state “This Product Contains Cannabis.” This section is for a cannabis sales facility and cannabis products. In 12.045 (2), sample label now includes an example of the proper warning on labels to include “This Product Contains Cannabis” and “Keep out of Reach of Children.” This section is for a cannabis sales facility and cannabis products.

- M. Regulation 13 outlines the requirements for Cannabis Distributors including duties of the distributor, storage of cannabis and cannabis products, distribution amounts, and multiple deliveries. Revisions include in 13.010 (3), revised language to state a cannabis distributor shall not deliver cannabis or cannabis products to a consumer under their distribution license. In 13.030 (8), added new subsection “8,” which states, “Before using a motor vehicle to transport cannabis or cannabis products, a cannabis testing facility must obtain the approval of the appropriate Board Agent for the use of the motor vehicle. Upon approving a motor vehicle for use to transport cannabis or cannabis products, the Board will issue an identification card containing such information as the Board Agent determines to be necessary which must be kept inside the motor vehicle at all

times.” Any vehicle used by an independent testing laboratory for sample pick up, must now be inspected and approved by a Board Agent.

- N. Regulation 14 outlines the requirements for patients to apply for, receive and renew a Registry Identification Card, Letter of Approval or Designated Primary Caregiver also includes process to petition the Division for a disease or condition to be added to the qualifying conditions. This regulation pertains mainly to the Department of Health and Human Services and comes largely intact from NAC 453. There are no major revisions in this section.
- O. Regulation 15 requires cannabis establishments to create and maintain policies and procedures prohibiting discrimination and harassment in the workplace.

Klimas asked for questions from the Board members. There were none.

- III. Klimas stated that any public comments received since yesterdays closing period and during the meeting will be posted online. Members of the public may submit their public comments to regulations@ccb.nv.gov.

Executive Director Klimas stated that the first Cannabis Compliance Board meeting will be noticed. Chairman Douglas added that the regulations that were read at the meeting have not been adopted. They will be put forth at the first meeting for formal adoption and comment will be received at that time. New submissions will be considered. The Board is also concerned with some of the matters pointed out by the industry, and will try to figure out suitable means to adapt them so that the requirements that were put forth by legislature are followed.

- IV. Meeting adjourned at 10:22 a.m.